

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.6350 OF 2005

Suresh Kalyanji Bhagat

...Applicant

VS.

State of Maharashtra

...Respondent

Mr.A.H.Ponda for the Applicant

Ms M.M.Deshmukh,A.P.P. for State

CORAM: A.S.OKA, J.

DATE : SEPTEMBER 27, 2005

P.C.:

. Not on board. Taken on board.

1. The prayer in this application is for grant of anticipatory bail in connection with C.R.No.I-84 of 2005 registered with Vashi Police Station. The other prayer is for direction to transfer the investigation in the said case and the third prayer is for directing the State to make payment of compensation to the Applicant.

2. When it was brought to the notice of the learned Counsel for the Applicant that the Applicant has not approached the Sessions Court, he submitted that the jurisdiction of the Sessions court and the jurisdiction of this Court is concurrent. He pointed out that in extraordinary circumstances this Court can always entertain the bail application even when the Applicant has not approached the Sessions Court. He pointed out that considering the averments made in this Application it is very clear that the police want

to frame the Applicant at the instance of the wife of the Applicant. He submitted that considering the peculiar facts of the case, this Court should entertain this application.

3. In my view, the Applicant could have always approached the Sessions court by filing an application for anticipatory bail. The Applicant claims to be a resident of Mumbai and the Sessions Court at Thane is having jurisdiction to entertain this application. In my view, this application cannot be entertained by this court and remedy of the Applicant is to approach the Sessions court. In so far as the other prayers are concerned regarding transfer of investigation and payment of compensation, it is obvious that the said prayers cannot be made in application under Section 438 of the Code of Criminal Procedure, 1973 and the remedy of the Applicant is to take out separate proceeding in that behalf.

4. At this stage, the learned Counsel for the Applicant submitted that to enable the Applicant to approach the Sessions Court, the Applicant be protected from arrest for a reasonable time. The said prayer is opposed by the learned A.P.P. for State by placing on record relevant material.

5. The offence has been registered under Sections 8(c), 20 and 29 of N.D.P.S. Act and therefore even the prayer for limited anticipatory bail may attract the provisions of

section 37 of the said Act of 1985. As the prayer made for limited protection is opposed by the learned A.P.P., I am required to consider the merits of the case in view of Section 37 of the said Act of 1985.

6. The case of the prosecution is that commercial quantity of contraband containing 8.33% of Morphine was found in a flat owned by the Applicant. The learned Counsel for the Applicant submitted that according to the case of the prosecution early in the morning on 7th September 2005 when the police visited the flat in question for arresting the Applicant, contraband was found. It is stated that the Police visited the said flat on information given by one Vinayak @ Balu Pawar. The case of the prosecution is that the said Pawar disclosed that the key of the flat was given to him by the Applicant.

7. The learned Counsel for the Applicant submitted that there is a correspondence on record to show that the police were trying to falsely implicate the Applicant. He stated that apart from the letters, a telegram was sent by the Applicant to the Commissioner of Police on 17th September 2005 pointing out that his wife threatened him on telephone that on next day he will be framed in an offence under the said Act of 1985 by planting Opium in the flat in question. The learned Counsel for the Applicant submitted that assuming that Opium was found on 7th September 2005, there is a gross delay in filing the

F.I.R. and the F.I.R. was registered on 18th September 2005.

8. The learned A.P.P. pointed out that the Investigating Officer registered the F.I.R. only after receipt of report from the Chemical Analyser which is dated 16th September 2005.

9. The learned Counsel for the Applicant submitted that there is nothing on record to show that the Applicant was in possession of the flat in question. In fact the correspondence which is annexed to the Application shows that the Applicant was not in possession of the said flat and he was not visiting the said flat.

10. In one of the letters which is annexed to the Application which is of the year 2003, the Applicant has admitted that he was the owner of the said flat. However, in the said letter he has only mentioned that he never visited the said flat. However, it is not disclosed in the said letter that the Applicant was not in possession of the said flat and the said stand appears to have taken in the telegram sent on 17th September 2005. Perusal of the investigation papers show that there is some material show that the Applicant had purchased the said flat. Moreover, it is disclosed by the Vinayak Pawar that key of the flat was handed over to him by the Applicant. Considering the material on record, at this stage, in the light of the applicability of the provisions of the said Act

of 1985, no case is made out for grant of temporary protection and the said request cannot be entertained.

11. It must be noted here that on 7th September 2005, large quantity of Opium is allegedly recovered from the Applicant and the concerned Officer waited till 18th September 2005 for registration of the F.I.R. Prima facie, this is a case of gross dereliction in duty. The Commissioner of Police must look into this aspect.

12. Hence I pass the following order :

i) Application is rejected with liberty to the Applicant to file appropriate application before the appropriate Court. If such application is made, the Sessions Court will decide the same on its own merits without being influenced by the tentative observations made in this order. Liberty to the Applicant to take out appropriate proceedings in so far as prayers (e) and (f) of the Petitions are concerned.

. At this stage, the learned Advocate for the Applicant prays that the operation of this order be stayed for a period of one week. The said prayer cannot be granted as grant of stay will not serve any purpose as the Applicant was not protected earlier by this Court. Hence, request is rejected.

JUDGE